

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COREY BRACEY,	)	
	)	
Plaintiff,	)	Civil Action No. 19-1385
	)	Magistrate Judge Maureen P. Kelly
v.	)	
	)	Re: ECF No. 26
COREY VALENCIA, <i>Correctional Officer I</i> ,	)	
MCLAREN MEDICAL LABORATORY,	)	
M.D. DENNIS W. SPENCER, <i>Laboratory</i>	)	
<i>Director</i> , WARD MEDICAL	)	
LABORATORY, M.D. WILLIAM G. FINN,	)	
<i>Laboratory Director</i> , GARCIA CLINICAL	)	
LABORATORY, and M.D. LORENZ P.	)	
KIELHORN, <i>Laboratory Director</i> ,	)	
	)	
Defendants.	)	

**ORDER OF COURT**

Defendants William Finn, M.D. and Ward Medical Laboratory have filed a “Praecipe for Entry of Non Pros Pursuant to Pa. R.C.P. 1042.7.” ECF No. 26. Rules 1042.6 and 1042.7 of the Pennsylvania Rules of Civil Procedure allow a defendant to a professional negligence claim to have the claim dismissed if the plaintiff fails to file a Certificate of Merit. **“In federal courts applying Pennsylvania law, because there is no procedural mechanism of Judgment of Non Pros, the ‘failure to submit the certificate is a possible ground for dismissal by the district court, when properly presented to the court in a motion to dismiss.’”** Stanich by & through Stanich v. Pickens, No. 18-CV-120E, 2019 WL 1330937, at \*2 (W.D. Pa. Mar. 25,2019) (quoting Turner v. Wetzel, 2018 WL 7253304, at \*4–5 (M.D. Pa. Dec. 28, 2018), report and recommendation adopted, 2019 WL 480484 (M.D. Pa. Feb. 7, 2019) citing Bresnahan v. Schenker, 498 F. Supp. 2d 758, 762 (E.D. Pa. 2007) and Keel-Johnson v. Amsbaugh, 2009 WL 648970, at \*3 & n.2 (M.D. Pa. Mar. 10, 2009) (emphasis added).

Accordingly, this 26<sup>th</sup> day of March 2020, IT IS HEREBY ORDERED that the Clerk strike the Praecept for Entry of Non Pros Pursuant to Pa. R.C.P. 1042.7 filed on behalf of Defendants William Finn, M.D. and Ward Medical Laboratory. Defendants may seek the requested relief pursuant to the Rule 12 of the Federal Rules of Civil Procedure.

BY THE COURT:

/s/ Maureen P. Kelly  
MAUREEN P. KELLY  
UNITED STATES MAGISTRATE JUDGE

cc: All counsel of record via CM/ECF

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